THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14903 OF 2007

25th July, 2007.

Between:

Shaik M. Aslam. .. Petitioner.

And

The Joint Collector, Kurnool,
Kurnool District and others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14903 OF 2007

ORAL ORDER:

The petitioner claims to be the owner of the lorry bearing Registration No.AP02-V-2926. The said lorry was seized by the Sub-Inspector of Police, Halagunda Police Station on 30.5.2007 while transporting 175 rice bags to Bellary.

In the panchanama under which the rice bags as well as the vehicle in question were seized, it was alleged that the rice meant for Food For Work Scheme was being transported illegally. Accordingly, a First Information Report was registered vide Cr.No.19/2007 on the file of Halagunda P.S., for the offence punishable under Section 7 of the Essential Commodities Act. The petitioner herein, who is the owner of the lorry, was shown as A1 and one Rawoof, a resident of Adoni to whom the seized rice belongs was shown as A2 in the FIR. Thereafter, the petitioner filed a Petition being Crl.M.P.No.879 of 2007 under Sections 451 and 457 of the Code of Criminal Procedure in the Court of the Judl. First Class Magistrate, Alur, seeking interim custody of the lorry together with Registration Certificate and Driving Licence, which

were seized under the panchanama dated 30.5.2007. The said Petition was dismissed by the learned Judl. First Class Magistrate by order dated 13.6.2007 on the ground that the vehicle in question was never produced before the Court and, therefore, it is not open to the petitioner to invoke the provisions of Section 451 and 457 of the Cr.P.C.,

The petitioner states that having regard to the observations made by the learned Magistrate in the order dated 13.6.2007, that the vehicle in question along with the seized rice was handed over to the Deputy Tahsildar, Halagunda, for safe custody by the Sub-Inspector of Police, the petitioner made a representation dated 29.6.2007 before the respondents 1 and 2 herein i.e., Joint Collector, Kurnool, and the Revenue Divisional Officer, Adoni, seeking release of the vehicle. However, they failed to consider the petitioner's request. Aggrieved by the inaction on the part of the respondents 1 and 2 in considering his representation dated 29.6.2007, this writ petition has been filed.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies appearing for the respondents.

The learned counsel for the petitioner contended that since there is no provision either under the Essential Commodities Act or the Control Orders made thereunder restricting movement of rice in the State of Andhra Pradesh, the respondents are not justified in seizing the lorry and initiating proceedings under Section 7 of the Essential Commodities Act. At any rate, since the petitioner is not in any way concerned with the alleged offence of transporting rice meant for 'food for work scheme', the seizure and detention of the lorry in question is unwarranted and unjustified.

The learned Government Pleader though could not point out any legal provision which restricts movement of rice and paddy, contended that in case the petitioner is aggrieved by the order passed

by the learned Magistrate, it is for him to work out the remedy of Revision before the competent Court, but he cannot maintain this writ petition under Article 226 of the Constitution of India.

On a perusal of the panchanama dated 30.5.2007 and the FIR in Cr.No.19/2007 of Halagunda P.S, it is clear that the seizure was effected only on the allegation that the rice which was meant for 'food for work scheme' was being transported illegally. It is not in dispute that the Government of India, New Delhi issued GSR 104(E) dated 15.2.2002 removing all restrictions on stocking and movement of paddy and rice in the State of Andhra Pradesh. Pursuant thereto, the Government of Andhra Pradesh has issued corresponding memo dated 27.3.2002. The effect of the said orders was subsequently clarified by the Commissioner of Civil Supplies vide proceedings dated 12.8.2002 stating that in view of the change in law on the subject, even where a trader is found to have indulged in purchasing rice meant for 'food for work scheme', the only course open to the authorities is to initiate proceedings under the Code of Criminal Procedure.

The learned counsel for the petitioner, while placing reliance upon the decision of this Court in **Sheela Srinivas v. District Collector, Karimnagar** (2002 (6) ALD 585) in which the seizure of huge quantity of rice made under similar circumstances was declared illegal, submitted that the impugned seizure being illegal, the respondents ought to have released the vehicle in question as sought by the petitioner.

As noticed above, even assuming that the petitioner had indulged in illegal transportation of rice meant for 'food for work scheme', the only course open to the authorities is to initiate proceedings under the Code of Criminal Procedure, but no steps can be taken for confiscation under Section 6-A of the Essential Commodities Act. However, the order of the learned Magistrate dated 13.6.2007 shows that the respondents did not produce the vehicle

before the Court, but it was kept in the custody of the Deputy Tahsildar. Since confiscation proceedings under Section 6-A of the Act are impermissible, the action of the respondents in detaining the vehicle without producing the same before the Court having jurisdiction is arbitrary and illegal.

Accordingly, the writ petition is allowed with a direction to the respondents to release the vehicle bearing Registration No.AP02-V-2926 in favour of the petitioner forthwith, subject to furnishing an undertaking that he would not alienate the said vehicle and produce the same as and when required for the purpose of investigation pending in Cr.No.19/2007. No costs.

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(G. ROHINI, J.)

25th July, 2007.
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